

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 09-01667

ORDER DENYING CONFIRMATION

The relief set forth on the following pages, for a total of 6 pages including this page,  
is hereby ORDERED.

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**FILED BY THE COURT**  
**06/03/2009**



Entered: 06/04/2009

US Bankruptcy Court Judge  
District of South Carolina

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Joseph A. LaJeunesse and  
Victoria M. LaJeunesse,

Debtor(s).

C/A No. 09-01667-DD

Chapter 13

**ORDER DENYING CONFIRMATION**

THIS MATTER is before the Court on the Objection to Confirmation of Plan filed by Joy S. Goodwin, Chapter 13 Trustee (“Trustee”), on May 6, 2009. Pursuant to Fed. R. Civ. P. 52, made applicable to this proceeding by Fed. R. Bankr. P. 7052 and 9014<sup>1</sup>, the Court makes the following findings of fact and conclusions of law.

***FINDINGS OF FACT***

Joseph A. LaJeunesse and Victoria M. LaJeunesse (“Debtors”) filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on March 4, 2009. Debtors’ chapter 13 plan, also filed March 4, 2009, proposes to pay their creditors \$395.00 per month for 60 months, or \$23,700.00. Debtors schedule \$142,183.00 in unsecured debts, all of which appear to be credit card debts. Debtors’ plan will pay approximately seven percent (7%) of the unsecured debts or \$10,320.00. Debtors’ income is above the median income for a family of five in South Carolina.

Mr. LaJeunesse is unemployed but receives \$1,820.02 per month from his VA benefit and military retirement. Mrs. LaJeunesse has been employed as a bookkeeper with Black River Electric Cooperative for three and one-half years. From her employment Mrs. LaJeunesse receives an average monthly income of \$3,193.00. Debtors’ Combined Average Monthly Income as reported on Schedule I is \$5,013.52.

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<sup>1</sup> Further reference to the Federal Rules of Bankruptcy Procedure will be by rule number only.

The family's gross annual income is reported on Form B22C in the amount of \$75,012.96. The applicable median income for a South Carolina family of 5 is \$70,435.00.<sup>2</sup>

The family currently spends \$1183.63 for their mortgage payment, including real estate taxes, property insurance, and home maintenance; \$290.00 for utilities; \$600.00 for food; \$155 for automobile taxes and insurance; \$716.83 miscellaneous expenses (clothing, laundry, medical, recreation, and charitable contributions); \$200 to support their elderly parents; and \$395.00 for transportation. The family spends \$460.00 for private school tuition each month.

Debtors' daughter has attended St. Anne Catholic School in Sumter, South Carolina from kindergarten through eighth grade. She is currently registered at St. Francis Xavier High School to begin the ninth grade. Testimony indicated that Debtors believed the private school to be necessary for their daughter to provide a religious education and because the public schools in their area are not satisfactory. Mr. LaJeunesse testified that a Catholic education for his daughter is very important to him and his wife. Debtors believe that a private education is superior to attending public school in their area and will better prepare her for college.

Mr. LaJeunesse testified to the efforts that the family has made to reduce expenses. They have abandoned their interest in a 2005 Ford F350; heat their home with wood stoves; and do not use air conditioning in the home; all so that they can send their daughter to private school. However, even after all of these reductions, Debtors are

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<sup>2</sup> Debtors' family is comprised of their thirteen-year-old daughter, an elderly mother aged 67, and an elderly father aged 70. Testimony established that the elderly parents are immigrants ineligible for Social Security and unable to work.

unable to increase the dividend to unsecured creditors by an amount equal to their daughter's private school tuition.

Debtors' Schedules I and J reflect an average monthly income of \$5,013.52 with average monthly expenses of \$4,618.25 leaving a monthly net income of \$395.27.

Debtors' Form B22C shows a current monthly income of \$6,251.08 with expenses in the amount of \$6,573.95 leaving Debtors' a negative monthly disposable income of -\$322.87.

### ***CONCLUSIONS OF LAW***

Trustee objects to the plan because Debtors are spending more than \$137.50 per month for private school tuition. Debtors urge the Court to extend its holding in *Cleary*.<sup>3</sup>

The Bankruptcy Code provides "that all of the debtor's projected disposable income to be received in the applicable commitment period ... will be applied to make payments to unsecured creditors under the plan." 11 U.S.C. § 1325(b)(1)(B).<sup>4</sup>

"'Disposable income' for above median income debtors is defined as a debtor's 'current monthly income,' also a defined term under § 101(10A)<sup>5</sup>, less amounts reasonably necessary 'to be expended' as determined by § 707(b)(2)(A) and (B)." *In re Edmunds*, 350 B.R. 636, 640 (Bankr. D.S.C. 2006). The debtor bears the burden of showing that an expense is reasonable for confirmation purposes. *In re Watson*, 403 F.3d 1 (1st Cir. 2005); *Lynch v. Tate (In re Lynch)*, 299 B.R. 776, 779 (W.D.N.C. 2003).

Projected disposable income is a forward-looking concept which should be based upon the debtor's applicable or actual projected expenses and allows debtors those

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<sup>3</sup> *In re Cleary*, 357 B.R. 369 (Bankr. D.S.C. 2006).

<sup>4</sup> Further reference to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, will be by section number only.

<sup>5</sup> "Current Monthly Income" is defined as "the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month ..." preceding the petition date. See § 101(10A).

categories of expenses recognized under the Means Test so long as those expenses are reasonably necessary. *Edmunds*, 350 B.R. at 643. Courts should determine a debtor's projected disposable income as of the petition date looking forward. *Id.* at 644.

Applicable expenses are those standard expenses set by IRS guidelines, while actual expenses are determined through a debtor's Schedule J and the treatment of debts in a proposed plan. *Id.*

The Bankruptcy Code allows above median income debtors to include as a monthly expense "actual expenses for each dependent child less than 18 years of age, not exceeding \$1,650 per year per child [or \$137.50 per month], to attend a private or public elementary school or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary." § 707(b)(2)(A)(ii)(IV). The calculations of the means test in chapter 7 and of disposable income for above median income debtors in chapter 13 provide presumptively reasonable limitations on expenditures for private school tuition. *In re Cleary*, 357 B.R. 369, 374 (Bankr. D.S.C. 2006).

This Court has previously found, under special circumstances, that private school tuition to be a reasonably necessary expense for a below median income debtor. *Id.* Under the circumstances in *Cleary*, the Court found that the Debtor was not limited to the expense ceiling of § 707(b)(2)(A)(ii)(IV), but the Court limited its decision to the facts of that case. *Id.* at 374.

Here, Debtors' income is above the South Carolina median for a family of five. Accordingly Debtors are limited to the \$1,650 per year per child [or \$137.50 per month] expense to attend a private or public elementary school or secondary school, as provided

in § 707(b)(2)(A)(ii)(IV). Debtors' actual projected expense for the education of their daughter, as reflected by Schedule J, is \$460.00. Debtors' expenditure for private school is above what Congress has determined to be reasonable and the excess \$322.50 is includable as projected disposable income. Confirmation of the plan is DENIED.

**AND IT IS SO ORDERED.**

Columbia, South Carolina  
June 3, 2009